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UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
E.I. DU PONT DE NEMOURS & CO.,)	
)	
Defendant.)	
)	

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (EPA), alleges:

1. This is a civil action brought against E.I. du Pont de Nemours & Co. (DuPont or Defendant) pursuant to Section 113(b) of the Clean Air Act (the Act), 42 U.S.C. § 7413, seeking injunctive relief and civil penalties at four of DuPont's sulfuric acid plants for violations of Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, the Prevention of Significant Deterioration (PSD) provisions of the Act; certain New Source Performance Standards (NSPS) promulgated under Section 111 of the Act, 42 U.S.C. § 7411; the Title V Permit requirements of the Act, 42 U.S.C. § 7661; and the federally enforceable State Implementation Plans (SIPs) for Kentucky, Louisiana, Ohio and Virginia approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410, which incorporate and/or implement the above-listed federal requirements.

2. The four sulfuric acid plants at issue in this action are located in North Bend, Ohio; Richmond, Virginia; Darrow, Louisiana; and Wurtland, Kentucky. DuPont constructed, modified, and/or reconstructed these sulfuric acid plants. Following such construction, modification and/or reconstruction, DuPont operated these sulfuric acid plants without first obtaining appropriate permits authorizing the construction, modification and/or reconstruction and subsequent operation of the plants; failed to install and employ the best available control technology to control emissions of sulfur dioxide (SO₂) and sulfuric acid mist as the Act, the applicable federal regulations and the SIPs require; and failed to comply with the applicable New Source Performance Standards.

JURISDICTION AND VENUE

3. This Court has jurisdiction of the subject matter of this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because some of the violations which constitute the basis of this Complaint occurred in this District.

NOTICES

5. EPA issued a Notice of Violation and Finding of Violation to DuPont on May 23, 2003, alleging PSD, SIP, Title V and NSPS violations at DuPont's Fort Hill sulfuric acid plant in Ohio.

6. EPA issued a Notice of Violation and Finding of Violation to DuPont on May 19, 2004, alleging PSD, SIP and NSPS violations at DuPont's James River sulfuric acid plant in Virginia.

7. The United States has provided notice of the violations of the Act alleged herein, to each of the four states in which DuPont's sulfuric acid plants identified in this Complaint are located, in accordance with Section 113 of the Act, 42 U.S.C. § 7413.

8. The 30-day period established in Section 113, 42 U.S.C. § 7413, between the notice of violation provided by the United States and the commencement of this civil action has elapsed.

THE DEFENDANT

9. DuPont is a Delaware corporation headquartered at 1007 Market Street, Wilmington, Delaware. DuPont is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

10. DuPont owns and operates, and at all times relevant to this Complaint DuPont owned and operated, the following sulfuric acid production plants: the Fort Hill plant in North Bend, Ohio; the James River plant in Richmond, Virginia; the Burnside plant in Darrow, Louisiana; and the Wurtland plant in Wurtland, Kentucky.

STATUTORY AND REGULATORY BACKGROUND

11. As set forth in Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1), the Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population.

The National Ambient Air Quality Standards

12. Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (NAAQS) requisite to protect the public health and welfare for certain criteria air pollutants. The primary NAAQS are to be adequate to protect the public

health, and secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects associated with presence of the air pollutant in the ambient air. EPA has identified and promulgated primary and secondary NAAQS for SO₂, which are codified at 40 C.F.R. §§ 50.4, 50.5.

13. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an “attainment” area. An area that does not meet the NAAQS is a “nonattainment” area. An area that cannot be classified due to insufficient data is designated as “unclassifiable.”

14. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a SIP that provides for the attainment and maintenance of the NAAQS.

The Prevention of Significant Deterioration Requirements

15. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process.

16. Section 165(a) of the Act, 42 U.S.C. § 7475(a), and implementing regulations (herein referred to as the “PSD regulations”), prohibit the construction, major modification, and

subsequent operation of a major emitting facility in an area designated as attainment or unclassifiable unless a permit (herein referred to as a “PSD permit”) has been issued setting forth emission limitations for such facility which conform to the PSD requirements. 40 C.F.R. § 52.21(a)(2)(iii).

17. Section 169(1) of the Act, 42 U.S.C. § 7479(1), defines “major emitting facility” as, *inter alia*, sulfuric acid plants which emit or have the potential to emit 100 tons per year (tpy) or more of any regulated air pollutant.

18. The PSD regulations define “major stationary source” as, *inter alia*, sulfuric acid plants which emit or have the potential to emit 100 tpy per year or more of any regulated air pollutant. 40 C.F.R. § 52.21(b)(1)(i)(a).

19. The PSD regulations define “major modification” as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any pollutant subject to regulation under the Act. 40 C.F.R. § 52.21(b)(2)(i).

20. “Significant,” as pertinent to this Complaint, means an increase in emissions of SO₂ that would equal or exceed 40 tpy and means an increase in emissions of acid mist that would equal or exceed 7 tpy. 40 C.F.R. § 52.21(b)(23)(i).

21. “Net emissions increase” is defined as “the amount by which the sum of the following exceeds zero: (a) any increase in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] from a particular physical change or change in method of operation at a stationary source; and (b) any other increases and decreases in actual emissions [as defined by 40 C.F.R. §

52.21(b)(21)] at the source that are contemporaneous with the particular change and are otherwise creditable.” 40 C.F.R. § 52.21(b)(3)(i).

22. The PSD regulations, 40 C.F.R. §§ 52.21(i) and (k), require the owner or operator to obtain a permit prior to construction of a major stationary source or of a major modification and, *inter alia*, to demonstrate that the construction or modification, taken together with other increases or decreases of air emissions, will not violate applicable air quality standards.

23. As set forth at 40 C.F.R. § 52.21(j), a new major stationary source or a major modification in an attainment area shall install and operate best available control technology (BACT), as that term is defined at 40 C.F.R. § 52.21(b)(12) and 42 U.S.C. § 7479(3), for each pollutant subject to regulation under the Act that it would have the potential to emit in significant amounts.

24. As set forth in 40 C.F.R. § 52.21(m), any application for a PSD permit must be accompanied by an analysis of ambient air quality in the area.

25. As set forth in 40 C.F.R. § 52.21(n), the owner or operator of a proposed source or modification must submit all information necessary to perform any analysis or make any determination required under 40 C.F.R. § 52.21.

26. Section 161 of the Act, 42 U.S.C. § 7471, requires SIPs to contain emission limitations and such other measures as may be necessary, as determined under the regulations promulgated pursuant to these provisions, to prevent significant deterioration of air quality in attainment areas.

27. A state or regional air authority may comply with Section 161, 42 U.S.C. § 7471, of the Act by being delegated by EPA the authority to enforce the federal PSD regulations set

forth at 40 C.F.R. § 52.21, or by having its own PSD regulations approved by EPA as part of its SIP, which must be at least as stringent as the requirements set forth at 40 C.F.R. § 51.166. All of the states and regional air authorities with jurisdiction over the sulfuric acid plants at issue in this matter have either delegated or approved PSD programs.

New Source Performance Standards

28. Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), requires EPA to publish and periodically revise a list of categories of stationary sources including those categories that, in EPA's judgment, cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

29. Once a category is included on the list, Section 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B), requires EPA to promulgate a federal standard of performance for new sources within the category, also known as a New Source Performance Standard (NSPS). Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits an owner or operator of a new source from operating that source in violation of a NSPS after the effective date of the NSPS applicable to such source.

30. "Stationary source" is defined as a building, structure, facility or installation which emits or may emit any air pollutant. 42 U.S.C. § 7411(a)(3); 40 C.F.R. § 60.2.

31. "New sources" as defined in Section 111(a)(2) of the Act, 42 U.S.C. § 7411(a)(2), are stationary sources, the construction or modification of which is commenced after the publication of the NSPS regulations or proposed NSPS regulations applicable to such sources.

32. EPA's general NSPS regulations at 40 C.F.R. Part 60, Subpart A contain general provisions applicable to all NSPS sources. 40 C.F.R. § 60.1 states that the provisions of 40

C.F.R. Part 60 apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the publication in Part 60 of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility. 40 C.F.R. § 60.2 defines “affected facility” as any apparatus to which a standard is applicable.

33. EPA promulgated a NSPS for sulfuric acid production plants for which construction or modification is commenced after August 17, 1971. These requirements are codified at 40 C.F.R. Part 60, Subpart H, §§ 60.80-85 (NSPS Subpart H).

34. The “affected facility” to which NSPS Subpart H applies is defined as each “sulfuric acid production unit” for which construction or modification is commenced after August 17, 1971. 40 C.F.R. § 60.80. A “sulfuric acid production unit” is any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides and mercaptans, or acid sludge” Id.

35. “Modification” under Section 111(a)(4) of the Act, 42 U.S.C. 7411(a)(4), and implementing regulations, 40 C.F.R. §§ 60.2, 60.14(a), is any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission into the atmosphere of any air pollutant (to which a standard applies) not previously emitted. An “existing facility” is “any apparatus of the type for which a standard is promulgated in this part, and the construction or modification of which was commenced before the date of proposal of that standard. . . .”

36. Upon modification, an “existing facility” becomes an “affected facility” for which the applicable NSPS must be satisfied. 40 C.F.R. § 60.14.

37. The NSPS regulations define “reconstruction” as “the replacement of components of an existing facility to such an extent that: (1) [t]he fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility, and (2) it is technologically and economically feasible to meet the applicable standards in this part.” 40 C.F.R. § 60.15.

38. Upon reconstruction, an “existing facility” becomes an “affected facility” for which the applicable NSPS must be satisfied. 40 C.F.R. § 60.15(a).

39. Pursuant to 40 C.F.R. § 60.7(a)(4), any owner or operator of an affected facility subject to a NSPS must furnish written notification to EPA of any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which a standard applies, postmarked 60 days or as soon as practicable before the change is commenced, with information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change.

40. Pursuant to 40 C.F.R. § 60.8, the owner or operator of an affected facility must conduct a performance test within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility, and furnish EPA a written report of the results of such performance test.

41. Pursuant to 40 C.F.R. § 60.82, the owner or operator of a sulfuric acid production unit subject to Subpart H may not discharge into the atmosphere from the affected facility any

gases which contain sulfur dioxide in excess of 2 kg per metric ton of acid produced (4.0 lb. SO₂ per ton of acid produced), the production being expressed as 100 percent sulfuric acid.

42. Pursuant to 40 C.F.R. § 60.83, the owner or operator of a sulfuric acid production unit subject to Subpart H may not discharge into the atmosphere from the affected facility any gases which contain acid mist, expressed as sulfuric acid, in excess of 0.075 kg per metric ton of acid produced (0.15 lb. sulfuric acid per ton of acid produced), the production being expressed as 100 percent sulfuric acid.

43. Pursuant to 40 C.F.R. § 60.84, the owner or operator of a sulfuric acid production unit must install, calibrate, maintain, and operate a continuous monitoring system for measuring SO₂ emissions.

Title V Permit Program

44. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including “major sources.” Pursuant to Section 502(b) of the Act, 42 U.S.C. § 7661a(b), EPA promulgated regulations implementing the requirements of Title V and establishing the minimum elements of a permit program to be administered by any state or local air pollution control agency. 57 Fed. Reg. 32250 (July 21, 1992). These regulations are codified at 40 C.F.R. Part 70.

45. “Major source” is defined by Section 501 of the Act, 42 U.S.C. § 7661(2), and 40 C.F.R. § 70.2, as, among other things, any source which directly emits or has the potential to emit 100 tons or more per year of any regulated air pollutant. SO₂ is listed as a regulated air pollutant under 40 C.F.R. § 70.2.

46. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and implementing regulations, 40 C.F.R. § 70.1(b), have at all relevant times made it unlawful for any person to violate any requirement of a permit issued under Title V or to operate a “major source” except in compliance with a permit issued by a permitting authority under Title V.

47. Section 504(a) of the Act, 42 U.S.C. § 7661c(a) and implementing regulations, 40 C.F.R. § 70.6a, have at all relevant times required that each Title V permit include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance with “applicable requirements” of the Act and the requirements of the relevant SIP. “Applicable requirements” as defined at 40 C.F.R. § 70.2 include any relevant PSD, and NSPS requirements.

48. Section 503 of the Act, 42 U.S.C. § 7661b, and implementing regulations, 40 C.F.R. § 70.5(a), require any owner or operator of a source subject to Title V permitting requirements to submit a timely and complete permit application. Among other things, this permit application must contain information sufficient to evaluate the subject source and its application and to determine all applicable requirements (including any requirement to meet applicable control technology requirements pursuant to the PSD regulations and to comply with NSPS), certification of compliance with all applicable requirements, information that may be necessary to determine the applicability of other applicable requirements of the Act, and a compliance plan for all applicable requirements for which the source is not in compliance.

49. 40 C.F.R. § 70.5(b) requires that any applicant, who fails to submit any relevant facts or who has submitted incorrect information in a permit application, promptly submit such

supplementary facts or corrected information upon becoming aware of such failure or incorrect submittal.

50. All of the states and regional air authorities involved in this matter have fully approved Title V programs that are in accordance with the Federal Title V regulations.

Enforcement Provisions

51. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that:

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may . . .

* * *

(C) bring a civil action in accordance with subsection (b) of this section.

52. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that “[e]xcept for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter . . . the Administrator may . . . bring a civil action in accordance with subsection (b) of this section”

53. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction and/or for civil penalties against any person whenever such person has violated, or is in violation of, any

requirement or prohibition of an applicable implementation plan, and other requirements of the Act.

GENERAL ALLEGATIONS

54. At all times relevant to this Complaint, DuPont owned and operated the following sulfuric acid production plants, which are collectively referred to hereafter as the "Plants": the Fort Hill plant in North Bend, Ohio; the James River plant in Richmond, Virginia; the Burnside plant in Darrow, Louisiana; and the Wurtland plant in Wurtland, Kentucky.

55. At the Plants, DuPont produces sulfuric acid using the contact process in which elemental sulfur or spent sulfuric acid is burned to form sulfur dioxide, which is then converted to sulfur trioxide and then finally converted to sulfuric acid.

56. At all times relevant to this Complaint, there were emissions of SO₂ and sulfuric acid mist from each of the Plants.

57. EPA has conducted investigations of one or more of DuPont's Plants, which included site inspections, review of permitting history and emissions data, and analysis of other relevant information obtained from DuPont concerning construction and operation of such Plants. The United States alleges the following based on the results of EPA's investigation, information and belief.

FIRST CLAIM FOR RELIEF

(PSD Violations)

58. Paragraphs 1 through 26 and 50 through 56 are realleged and incorporated herein by reference.

59. Since their initial construction one or more of the Plants emit or have had the potential to emit 100 tpy or more of SO₂ and are “major emitting facilities” as that term is defined in Section 169(1) of the Act, 42 U.S.C. § 7479(1), and “major stationary sources” as that term is defined in the PSD regulations, 40 C.F.R. § 52.21.

60. Major modifications to some or all of the Plants resulted in significant net emission increases of SO₂ and sulfuric acid mist as defined by 40 C.F.R. § 52.21(b)(3)(i).

61. Some or all of the Plants are subject to the PSD regulations at 40 C.F.R. Part 52.

62. Since the construction of, or major modification(s) to, some or all of the Plants, DuPont has been in violation of Section 165(a) of the Act, 42 U.S.C. § 7475(a), the PSD regulations set forth in 40 C.F.R. § 52.21, and the corresponding state implementation plans, by, without limitation, undertaking such construction or major modification(s) and operating the Plants without first obtaining a PSD permit as required by 40 C.F.R. § 52.21(a)(2)(iii)); by failing to install and operate BACT for control of SO₂ as required by 40 C.F.R. § 52.21(j); by failing to provide the permitting authorities with all relevant information necessary to perform an analysis of whether any proposed activities will cause or contribute to air pollution and of the ambient air quality in the area as required by 40 C.F.R. § 52.21(k) and (m); and by failing to provide the permitting authorities with all relevant information necessary to perform an analysis of whether any proposed activities constituted a “major modification,” in violation of 40 C.F.R. § 52.21(n).

63. Unless restrained by an order of this Court, the violations of the Act alleged in this First Claim for Relief will continue.

64. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject DuPont to injunctive relief and civil penalties of up to \$25,000 per day for

each violation prior to January 30, 1997; up to \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and up to \$32,500 per day for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; see 40 C.F.R. Part 19, 69 Fed. Reg. 7126 (Feb. 13, 2004).

SECOND CLAIM FOR RELIEF

(NSPS Violations)

65. Paragraphs 1 through 13, 27 through 42, and 50 through 56 are realleged and incorporated herein by reference.

66. The Plants are “stationary sources” as that term is defined in Section 111(a)(3) of the Act, 42 U.S.C. § 7411(a)(3) and the implementing regulations at 40 C.F.R. § 60.2.

67. DuPont is the owner or operator, within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of sulfuric acid production units, within the meaning of 40 C.F.R. § 60.80, located at the Plants.

68. DuPont commenced construction, modification or reconstruction, as those terms are defined at 40 C.F.R. §§ 60.2, 60.14, and 60.15, respectively, of the sulfuric acid production units at one or more of the Plants after August 17, 1971.

69. Each sulfuric acid production unit at one or more of the Plants is an “affected facility” subject to the NSPS, Subparts A and H, 40 C.F.R. §§ 60.1-60.19 and 60.80-60.85, respectively.

70. DuPont failed to keep records of and notify EPA of its construction, modification or reconstruction of its affected facilities at one or more of the Plants in violation of 40 C.F.R.

§ 60.7 and applicable SIP requirements.

71. DuPont failed to conduct a performance test within 180 days after the construction, modification or reconstruction of its affected facilities at one or more of the Plants and to furnish the EPA a written report of the results, in violation of 40 C.F.R. § 60.8 and applicable SIP requirements.

72. Since the construction, modification or reconstruction of the affected facilities at one or more of the Plants, DuPont has operated the sulfuric acid production units in such a manner that the emission limitation of 2 kg SO₂ per metric ton of acid produced (4.0 lb. per ton) has been exceeded, in violation of 40 C.F.R. § 60.82 and applicable SIP requirements.

73. Since the construction, modification or reconstruction of the affected facilities at one or more of the Plants, DuPont has operated the sulfuric acid production unit in such a manner that the emission limitation of 0.075 kg acid mist (expressed as sulfuric acid) per metric ton of acid produced (0.15 lb. per ton) has been exceeded, in violation of 40 C.F.R. § 60.83 and applicable SIP requirements.

74. The sulfuric acid production units at one or more of the Plants are not equipped with a properly installed, calibrated, and maintained continuous emission monitor which meets Performance Specification 2 in 40 C.F.R. Part 60 Appendix B and therefore are in violation of 40 C.F.R. § 60.13, 40 C.F.R. § 60.84 and the applicable SIP requirements.

75. Unless restrained by an order of this Court, the violations of the Act alleged in this Second Claim for Relief will continue.

76. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject DuPont to injunctive relief and civil penalties of up to \$25,000 per day for

each violation prior to January 30, 1997; up to \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and up to \$32,500 per day for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; see 40 C.F.R. Part 19, 69 Fed. Reg. 7126 (Feb. 13, 2004).

THIRD CLAIM FOR RELIEF

(Title V Permit Program Violations)

77. Paragraphs 1 through 13 and 43 through 56 are realleged and incorporated herein by reference.

78. At all times relevant to this complaint, one or more of the Plants was a “major source” within the meaning of Section 501(2) of the Act, 42 U.S.C. § 7661(2), and the implementing regulations at 40 C.F.R. § 70.2.

79. One or more of the Plants is subject to the Title V permitting requirements in 40 C.F.R. Part 70.

80. DuPont commenced construction or major modifications of one or more of the Plants as defined under the PSD regulations, 40 C.F.R. Part 52.

81. DuPont commenced construction, modification or reconstruction of one or more of the Plants as defined under the NSPS regulations, 40 C.F.R. Part 60.

82. After the acts alleged in Paragraphs 79 and 80, DuPont failed to submit a complete application for Title V operating permits and annual compliance certifications for one or more of the Plants that identified all applicable requirements, that accurately certified compliance with such requirements, and that contained a compliance plan for all applicable

requirements for which the source was not in compliance with Sections 502 and 503 of the Act, 42 U.S.C. §§ 7661a and b, the implementing regulations, 40 C.F.R. Parts 70 and 71, and the applicable SIP requirements.

83. Unless restrained by an order of this Court, the violations of the Act alleged in this Third Claim for Relief will continue.

84. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject DuPont to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997; up to \$27,500 per day for each such violation between January 30, 1997 and March 15, 2004; and up to \$32,500 per day for each such violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; see 40 C.F.R. Part 19, 69 Fed. Reg. 7126 (Feb. 13, 2004).

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in paragraphs 1 through 83 above, the United States of America requests that this Court:

1. Permanently enjoin DuPont from operating the sulfuric acid production units at the Plants, including the construction of future modifications or reconstructions, except in accordance with the Clean Air Act and applicable regulatory requirements;
2. Order DuPont to remedy its past violations by, among other things, requiring DuPont to install, as appropriate, the best available control technology, or such other emissions control technology required by law, on the sulfuric acid production units at the Plants for each pollutant subject to regulation under the Clean Air Act;

3. Order DuPont to apply for permits that are in conformity with the requirements of the Clean Air Act and SIP requirements;
4. Order DuPont to comply with the NSPS provisions of the Act;
5. Assess a civil penalty against DuPont of up to \$25,000 per day for each violation of the Act occurring prior to January 30, 1997, up to \$27,500 per day for each violation of the Act occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation of the Act occurring after March 15, 2004;
6. Award Plaintiff its costs of this action; and,
7. Grant such other relief as the Court deems just and proper.

Respectfully Submitted,

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